



PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

M. Schock

Serial No.: 10/754,460

Filed: January 9, 2004

*Attorney Docket No.: HOE-793*

Examiner: J. Riggleman

Art Unit: 1792

For: **A DEVICE INCORPORATING A CHAMBER THROUGH WHICH FLUID  
IS ADAPTED TO FLOW AND THE USE OF A DRAWER GUIDE IN SUCH  
A DEVICE**

Mail Stop: Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope addressed to: Mail Stop: Appeal Brief - Patents, Commissioner for Patents, Alexandria, VA 22313-1450, on June 2, 2009.

By:

Denise Palmer

**APPELLANTS' BRIEF (37 C.F.R. 41.37)**

This brief is in furtherance of the Notice of Appeal filed in this case on February 9, 2009 (mailed February 5, 2009). A Pre-Appeal Brief Review Conference was requested and a Notice of Panel Decision from Pre-Appeal Brief Review was mailed on March 5, 2009.

As the deadline for submitting the Appeal Brief was April 9, 2009 (two months from the receipt of the Notice of Appeal), a petition and fee for a two-month extension of time is being submitted simultaneously herewith.

In addition, the fees required under §41.20(b)(2) are accounted for in the accompanying TRANSMITTAL OF APPEAL BRIEF.

06/04/2009 WABDELRI 00000027 10754460 540.00 DP  
01 FC:1402

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. 41.37(c)):

(1) REAL PARTY IN INTEREST .....	3
(2) RELATED APPEALS AND INTERFERENCES .....	3
(3) STATUS OF CLAIMS .....	3
(4) STATUS OF AMENDMENTS .....	3
(5) SUMMARY OF CLAIMED SUBJECT MATTER.....	4
(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.....	11
(7) ARGUMENT: DISCUSSION OF REJECTIONS UNDER 35 U.S.C. § 103(a) .....	11
(7)(1) Claims 41-58 Are Not Obvious Under 35 U.S.C. § 103(a) Over Wied in View of Tadaharu. ....	11
(7)(1.1) Overview of the Present Application .....	11
(7)(1.2) Discussion of Final Office Action and Rejection of Claim 41 ...	13
(7)(1.3) Discussion of Final Office Action and Rejection of Dependent Claims 42-58 .....	20
(7)(1.3.1) Discussion of Rejection of Claims 42 and 43 .....	20
(7)(1.3.2) Discussion of Rejection of Claims 44 and 45 .....	21
(7)(1.3.3) Discussion of Rejection of Claim 46 .....	22
(7)(1.3.4) Discussion of Rejection of Claim 47 .....	23
(7)(1.3.5) Discussion of Rejection of Claims 48 and 49 .....	24
(7)(1.3.6) Discussion of Rejection of Claim 50 .....	25
(7)(1.3.7) Discussion of Rejection of Claim 51 .....	26
(7)(1.3.8) Discussion of Rejection of Claim 52 .....	27
(7)(1.3.9) Discussion of Rejection of Claims 53-56 .....	28
(7)(1.3.10) Discussion of Rejection of Claims 57 and 58 .....	28
(8) CONCLUSION .....	29
(9) CLAIMS APPENDIX .....	31
(10) EVIDENCE APPENDIX .....	34
(11) RELATED PROCEEDINGS APPENDIX .....	35

**(1) REAL PARTY IN INTEREST**

The real party in interest in this appeal is: Schock Metallwerk GmbH, a German Limited Liability Company having its principal place of business at Siemensstrasse 1-3, 73660 Urbach, Germany, the assignee of a 100% interest in the present application.

**(2) RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences that are related to this appeal or that will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

**(3) STATUS OF CLAIMS**

The status of the claims in this application is:

A. Total Number Of Claims In Application:

There are 18 claims pending in the application. The pending claims are claims 41-58.

B. Status Of All The Claims:

1. Claims canceled: 1-40.
2. Claims withdrawn from consideration but not canceled: NONE.
3. Claims pending: 41-58
4. Claims allowed: NONE
5. Claims objected to: NONE
6. Claims rejected: 41-58

C. Claims Being Appealed:

The claims being appealed are: 41-58.

**(4) STATUS OF AMENDMENTS**

Applicant filed an Amendment on August 17, 2007 (mailed August 15, 2007) in response to a May 31, 2007 Office Action. Claims 1-40 were cancelled and claims 41-58

were added by this Amendment, which was entered by the Examiner. It is noted that in response to a prior restriction requirement, claims 24-40 were elected by Applicant. Claims 41-58 correspond to the subject matter of original claims 24-40, rewritten to overcome the section 112 rejections set forth in the Office Action. Non-elected claims 1-23 were cancelled.

Applicant filed a Response on February 4, 2008 (mailed January 31, 2008) in response to an Office Action mailed on November 1, 2007. No claim amendments were made in this Response.

Applicant filed a second Amendment on August 14, 2008 (mailed August 12, 2008) in response to an Office Action mailed on May 15, 2008. Claims 41-52 and 56 were amended in this Amendment.

A final Office Action was mailed on December 5, 2008.

Applicant filed a Notice of Appeal together with a Pre-Appeal Brief Request For Review and corresponding Summary of Arguments for Pre-Appeal Brief Review Conference on February 9, 2009 (mailed February 4, 2009). A Notice of Panel Decision from Pre-Appeal Brief Review was mailed on March 5, 2009 which indicated that the rejections set forth in the final Office Action were maintained.

#### **(5) SUMMARY OF CLAIMED SUBJECT MATTER**

The claimed invention relates to a method for providing a drawer guide for a drawer in a chamber through which there is a flow of fluid or gas at an elevated pressure, and specifies providing a plurality of guide rails, one of which is associated with the drawer and one of which is associated with the chamber. A rolling member assembly with rolling members is provided for guiding one of the guide rails in a displaceable manner on another one of the guide rails in a direction of movement of the drawer (i.e., a telescoping guide rail). A cage is provided for the rolling members and fluid passage openings (holes) are provided in at least a section of a rear cage portion of the cage for the rolling members of guide rails. Such a drawer guide may be used, for example, in a dishwasher, a washing machine, or other chamber through which there is a flow of fluid or gas at an elevated pressure.

Providing fluid passage openings in the rear cage portion as claimed by Applicant provides advantages not present in prior art dishwashers and similar devices.

Such a method is set forth in Applicant's claims, as follows:

**Claim 41:** *"A method for providing a drawer guide for a drawer in a chamber through which there is a flow of liquid or gas at an elevated pressure"*

Figures 1 and 2 show a device 100 (such as a dishwasher) having a chamber 102 through which liquid is adapted to flow (See, e.g., Applicant's specification, paragraph bridging pages 16 and 17; and second paragraph on page 2). The chamber 102 accommodates one or more drawers 120 (See, e.g., Applicant's specification, page 17, second full para.). The drawer 120 is held on two side walls by a respective drawer guide 122 (See, e.g., Applicant's specification, page 17, fourth full para.).

The method of claim 41 comprises the steps of:

*"providing a plurality of guide rails for said drawer guide, wherein one guide rail is associated with said drawer and another guide rail is associated with said chamber;"*

Figure 3 shows a drawer guide 122 comprising two guide rails 136 in a withdrawn (extended) state (See, e.g., Applicant's specification, page 19, first full para.). Figure 4 shows the drawer guide with the two guide rails 136 in a fully pushed-in state. An embodiment in which each drawer guide 122 comprises three guide rails 136a, 136b, and 136c is shown in Figures 5-11 (See, e.g., Applicant's specification, page 19, fourth and fifth full paras.). One guide rail is associated with the drawer 120 and one guide rail is associated with the chamber 102 (as shown in Figures 1 and 2 and discussed, e.g., in Applicant's specification at page 19, fifth full para.)

*"providing a rolling member assembly with rolling members for guiding one of the guide rails in a displaceable manner on another guide rail in a direction of movement of the drawer;"*

Rolling member assemblies 138, 138a, and 138b are provided for guiding each guide rail 136 in a displaceable manner on another of the guide rails 136 as shown in Figures 3, 5, and 6 (See, e.g., Applicant's specification, paragraph bridging pages 18 and 19). Figure 6 shows a cross-section of the drawer guide 122 with the rolling member assemblies 138a and 138b, the guide rails 136a, 136b and 136c, and rolling members 150.

*"providing a cage for the rolling members;"*

A cage 166a is provided for the rolling members 150, as shown in Figure 6 (See, e.g., Applicant's specification, page 20, last full para.).

*"providing a rear cage portion on said cage, said rear cage portion including at least one partial section that extends in the direction of movement of the drawer and is provided with fluid passage openings in such a manner that said liquid or gas is adapted to flow through the cage when the chamber is in use."*

A rear cage portion 160a is provided which includes at least one partial section 162a that extends in the direction of movement 124 of the drawer 120 and which is provided with fluid passage openings 164 (See, e.g., Applicant's specification, page 22, second full para; and Figures 6 and 8). The fluid passage openings are adapted to permit the flow of liquid or gas through the cage 166a when the chamber 102 is in use (See, e.g., Applicant's specification, page 2, second indented para.; and Abstract).

**Claim 42:** *"wherein a ratio of a surface area of the fluid passage openings in the cage to a total surface area of the rear cage portion in the partial section amounts to at least approximately 20%."*

The ratio of the surface area of the fluid passage openings 164 in the cage 166a for the rolling members 150 to the total surface area of the rear cage portion 160a (including the surface area of the fluid passage openings 164) in the partial section that is provided with the fluid passage openings amounts to at least approximately 20 % (See, e.g., Applicant's specification, page 5, second full para.).

**Claim 43:** *“wherein a ratio of a surface area of the fluid passage openings in the cage to a total surface area of the rear cage portion in the partial section amounts to at most approximately 90%.”*

The ratio of the surface area of the fluid passage openings 164 in the cage 166a for the rolling members 150 to the total surface area of the rear cage portion 160a (including the surface area of the fluid passage openings 164) in the partial section that is provided with the fluid passage openings amounts to at most approximately 90 % (See, e.g., Applicant’s specification, paragraph bridging pages 6 and 7).

**Claim 44:** *“wherein at least one of the partial sections that is provided with fluid passage openings extends over at least one third of a length of the rear cage portion.”*

At least one of the partial sections of the rear cage portion 160a provided with fluid passage openings 164 extends over at least one third of a length of the rear cage portion 160a (See, e.g., Applicant’s specification, page 8, first full para.).

**Claim 45:** *“wherein a sum of lengths of the partial sections that are provided with fluid passage openings is greater than approximately two thirds of a total length of the rear cage portion.”*

The sum of lengths of the partial sections of the rear cage portion 160a that are provided with fluid passage openings 164 is greater than approximately two thirds of a total length of the rear cage portion 160a (See, e.g., Applicant’s specification, page 8, second full para.).

**Claim 46:** *“wherein at least one partial section of one of the guide rails comprises fluid passage openings whose lateral distance from at least one lateral edge of an associated rear rail portion is less than approximately a quarter of a width of the rear rail portion.”*

At least one partial section 154a of the guide rails 136, 136a, 136b, and 136c is provided with fluid passage openings 140. The fluid passage openings 140 may be arranged in the partial section 154a at a lateral distance from at least one of the lateral edges of the rear rail portion 144a of the guide rail which is less than approximately a

quarter of the width of the rear rail portion 144a (See, e.g., Applicant's specification, paragraph bridging pages 20 and 21; page 9, second full para; and Figure and 7).

**Claim 47:** *"wherein a pertinent partial section of the rear cage portion comprises at least three substantially congruent fluid passage openings."*

The fluid passage openings 164 in the rear cage portion 160a may be designed such that they are congruent to one another (See, e.g., Applicant's specification, page 22, third full para.).

**Claim 48:** *"wherein an extent of each of the fluid passage openings in the rear cage portion is at most approximately 5 mm in at least one direction in which it extends."*

The extent of the fluid passage openings 164 is at most 5 mm in at least one direction in which it extends (See, e.g., Applicant's specification, page 10, third full para.).

**Claim 49:** *"wherein an extent of each of the fluid passage openings in the rear cage portion is at most approximately 5 mm in the direction of movement of the drawer."*

The extent of the fluid passage openings 164 is at most 5 mm in the direction 124 of movement of the drawer 120 (See, e.g., Applicant's specification, page 10, fourth full para.).

**Claim 50:** *"wherein at least one of the guide rails of the drawer guide and at least one cage for the rolling members of the same drawer guide are provided with fluid passage openings."*

At least one of the guide rails 136, 136a, 136b, and 136c is provided with fluid passage openings 140. The cage 166a is provided with fluid passage openings 164. Figure 7 shows a guide rail 136a with fluid passage openings 140 and Figure 8 shows a rolling member assembly 138a for the drawer guide 122 (See also, e.g., Applicant's specification, paragraph bridging pages 10 and 11).



**Claim 51:** *“wherein when the drawer guide is pushed completely into an interior of said chamber, at least one fluid passage opening in the guide rail and at least one fluid passage opening in the cage for the rolling members are aligned with one another.”*

The guide rails 136 may be formed in such a way that, in the completely pushed-in state of the drawer guide 122, the fluid passage openings 140 of the guide rails 136 are aligned with one another and with the fluid passage openings 164 in the cage 166a for the rolling members 150 (See, e.g., Applicant’s specification, page 19, third full para.).

**Claim 52:** *“wherein at least one of the guide rails of the drawer guide comprises a rolling member running track which is provided with at least one fluid passage opening.”*

A running track 148a for the rolling members 150 may be provided on a guide rail (e.g., guide rail 136a) as shown in Figure 7 (See, e.g., Applicant’s specification, page 20, fourth full para.). The running track 148a may be provided with fluid passage openings 176 as shown in Figure 12 (See, e.g., Applicant’s specification, page 28, third full para.).

**Claim 53:** *“wherein at least one rolling member assembly of the drawer guide comprises rolling members in the form of balls.”*

The rolling members 150 of the rolling member assembly 138a may be in the form of balls (See, e.g., Applicant’s specification, page 20, fourth full para.).

**Claim 54:** *“wherein at least one rolling member assembly of the drawer guide comprises rolling members which are each in single-point contact with a rolling member running track of a guide rail of the drawer guide that is associated with the rolling members.”*

The radii of the rolling members 150 and the radii of curvature of the running tracks 148a, 148b, 148b' and 148c for the rolling members 150 may be matched to one another in such a manner that each rolling member 150 touches the rolling member running track associated therewith at a single point (See, e.g., Applicant’s specification, page 27, last full para. through page 28, first full para.).

**Claim 55:** *“wherein the drawer guide comprises at least one further guide rail arranged between the guide rail associated with the drawer and the guide rail associated with the chamber.”*

Figures 5-11 show an embodiment in which each drawer guide 122 comprises three guide rails 136a, 136b, and 136c (See, e.g., Applicant’s specification, page 19, fourth and fifth full paras.). One guide rail 136c is associated with the drawer 120 and one guide rail 136a is associated with the chamber 102, and a third guide rail 136b is arranged between the other two guide rails 136c and 136a (See, e.g., Applicant’s specification, page 19, fourth and fifth full paras.).

**Claim 56:** *“wherein the drawer guide allows the drawer to be withdrawn substantially completely from an interior of the chamber.”*

The drawer guides 122 are full withdrawal guides which permit the respectively associated drawer 120 to be substantially completely pulled out from the interior 104 of the chamber 102 (See, e.g., Applicant’s specification, page 17, fifth full para.).

**Claim 57:** *“wherein the chamber comprises a washing machine chamber.”*

The chamber 102 may be a washing machine chamber (See, e.g., Applicant’s specification, page 14, second full para.).

**Claim 58:** *“wherein the chamber comprises a dishwasher chamber.”*

The chamber 102 may be a dishwasher chamber (See, e.g., Applicant’s specification, page 14, second full para.).

**(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

1. Whether claims 41-58 are unpatentable under 35 U.S.C. § 103(a) over Wied (EPO 0 768 050) in view of Tadaharu (JP2000-254087).

**(7) ARGUMENT: DISCUSSION OF REJECTIONS UNDER 35 U.S.C. § 103(a)**

Applicant refers to MPEP §706.02(j) - Contents of a 35 U.S.C. 103 Rejection, which specifies:

*“To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).*

MPEP §706.02(j).

Applicant respectfully submits that the Examiner has not established *prima facie* obviousness.

**(7)(1) Claims 41-58 Are Not Obvious Under 35 U.S.C. § 103(a) Over Wied in View of Tadaharu**

**(7) (1.1) Overview of the Present Application**

As discussed in the introductory portion of the specification, the present application is directed towards a drawer guide, and a method for providing a drawer guide, for a drawer in a chamber through which there is a flow of fluid or gas at an elevated pressure. Such a drawer guide may be used, for example, in a dishwasher, a washing machine, or other chamber through which there is a flow of fluid or gas at an elevated pressure.

For example, dishwashers are known which incorporate a rinsing chamber through the interior of which there is a flow of a rinsing liquid (water together with cleaning additives) when the device is in operation. Such a prior art dishwasher may comprise at least one drawer in the form of a table-ware basket for holding the articles

which are to be cleaned. The drawer is withdrawable from the rinsing chamber and in so doing is guided on a pair of withdrawable guide rails by means of rollers.

With such prior art dishwashers, it is a disadvantage that guiding the drawer on the extendable guide rails by means of the rollers is a cumbersome operation and not very precise, and the guide rails also tend to be pulled out from the interior of the rinsing chamber in an uneven manner, this thereby resulting in the drawer being slightly tilted as it is being withdrawn. Furthermore, in operation of the device, the dirt that is rinsed off the articles being cleaned is deposited on the running tracks of the guide rails where it is compacted by the rollers guiding the drawer, this thus impairing the running attributes of the rollers on the running tracks.

The object of the present invention is to provide a drawer guide which enables precise and smooth-running guidance of the drawer during pushing and pulling movements of the drawer into and out of the chamber.

This object is achieved by providing a drawer guide as claimed in claim 41, that comprises at least one guide rail at the drawer side and one guide rail at the chamber side and at least one rolling member assembly by means of which one of the guide rails is guided in displaceable manner on another guide rail of the drawer guide in the direction of movement of the drawer and which also comprises a cage for the rolling members, wherein the cage comprises a rear cage portion which includes at least one partial section that extends in the direction of movement of the drawer and which is provided with fluid passage openings in such a manner that the liquid or the gas is adapted to flow through the cage for the rolling members when the device is in operation.

Due to the fluid passage openings provided in the rear cage portion of the cage for the rolling members (and in other embodiments in the rear rail portions of the guide rails), through which openings the liquid or the gas flowing through the chamber can enter the drawer guide and then depart from the drawer guide, it is thereby ensured that the drawer guide, and in particular, the rolling member assembly and the running tracks for the rolling members, will not be subjected to deposits of dirt particles and thus become unusable, but rather, that they will be flushed through the drawer guide by the liquid or the gas with as little obstruction as possible, thus keeping the running tracks and

rolling members free of dirt deposits by virtue of such flushing action (see, e.g., Applicant's specification, page 3, last full para.).

The concept underlying the present invention was very surprising to the inventors since it would have appeared to one skilled in the art at the time to be much more obvious to prevent contamination of the running tracks of the drawer guide by shielding the interior of the drawer guide (i.e., the guide rails and the rolling members) to as large an extent as possible from the penetration of liquid or gas from the interior of the chamber in order to thereby prevent the ingress of the dirt particles which are rinsed off the articles being cleaned. Unexpectedly however, it has been discovered that the penetration of liquid or gas into the drawer guide, even if the liquid or gas is loaded with dirt particles, is not harmful to the normal functioning of the drawer guide, as long as it is ensured that the liquid or the gas together with the dirt particles carried therein can then flow out of the drawer guide again with as little obstruction as possible. In this way, dirt particles are prevented from accumulating in the drawer guide, and in particular, on the bearing surfaces of the rolling members, which accumulation of dirt particles could impair the normal functioning of the drawer guide (see, e.g., Applicant's specification, page 4, first full para.).

Thus, providing fluid passage openings in the rear cage portion as claimed by Applicant provides advantages not present in such prior art dishwashers, washing machines, and similar devices.

**(7) (1.2) Discussion of Final Office Action and Rejection of Claim 41**

Claims 41 is rejected as being unpatentable over Wied in view of Tadaharu.

Applicant respectfully submits that the combination of Wied and Tadaharu does not disclose or remotely suggest the use of telescoping guide rails in a chamber through which there is a flow of liquid or gas at an elevated pressure in which a rear cage portion of a cage for rolling members is provided which has at least one partial section with fluid passage openings, as claimed by Applicant.

The Examiner relies on Wied as disclosing all the elements of Applicant's claim 41 with the exception of "*a flow of liquid or gas through the drawer guide for the rolling members (in rear cage portion)*" (Final Office Action, page 4).

The Examiner apparently takes the position that it is known or would have been obvious to use a telescoping drawer guide of the type disclosed in Wied in a chamber having a flow of fluid or gas, such as a dishwasher or washing machine. Applicant respectfully disagrees. Applicant respectfully submits that, prior to the date of Applicant's invention, telescoping guide rails of the type used in Wied were not used in dishwashers or other chambers having a flow of fluid. At the time, in conventional dishwashers, an upper rack was provided with rollers or wheels which roll on a guide rail, and the guide rail may be slidably extendible relative to a side wall of the dishwasher. However, such an arrangement is completely different from a telescoping drawer guide which comprises a plurality of guide rails and rolling members held in a cage between two guide rails for guiding one of the guide rails in a displaceable manner on the other guide rail, as set forth in Applicant's claim 41.

Although such telescoping drawer guides were known, they were not used in dishwashers or other devices having a flow of fluid or gas therethrough. In fact, at the time of the present invention, one skilled in the art would have been taught away from using the telescoping guide rail of Wied in, e.g., a dishwasher, since dirt and debris rinsed off of the articles being cleaned would be deposited in the cages for the rolling members and would impede movement of the rolling assembly. Only by providing fluid passage openings in the rear cage portion of a cage for the rolling members, as set forth in Applicant's claimed invention, is it possible to allow water to flow through the cage when the dishwasher is in use so that the cages for the rolling members of telescoping guide rails are kept free of dirt and debris by virtue of the flushing action achieved by the water passing through the holes.

Accordingly, Wied does not disclose or remotely suggest the use of a telescoping drawer guide in a chamber having a pressurized flow of fluid or gas (e.g., a dishwasher or the like), and it is respectfully submitted that the drawer guide of Wied is not suitable for such a purpose for the reasons set forth above. There is also no motivation or suggestion

to be found in either reference for using a telescoping drawer guide of the type disclosed in Wied in a dishwasher or washing machine.

The Examiner relies on Tadaharu as disclosing guide rails for a dishwasher that have fluid passages (Final Office Action, page 4). It is acknowledged that Tadaharu discloses guide rails 15 and 16 having fluid passage openings 15a and 16a (see Figures 7 and 9 and English language Abstract). However, the guide rails 15 and 16 of Tadaharu are fixed guide rails and not telescoping guide rails as claimed by Applicant or as disclosed in Wied.

However, neither Wied nor Tadaharu discloses a cage for rolling members having a rear cage portion with fluid passage openings in at least one partial section thereof, as claimed by Applicant. Wied discloses a cage for rolling members, without any fluid passage openings. Tadaharu does not disclose any cage for rolling members, only stationary guide rails with fluid passage openings. Thus, the combination of Wied and Tadaharu does not disclose or suggest all the limitations of claim 41.

Referring to the English language translation of Tadaharu provided by the Examiner as an attachment to the Office Action mailed on May 15, 2008, it is noted that Tadaharu discloses only fixed guide rails for guiding the movement of the drawer. Tadaharu does not discuss how the drawer is moved on the fixed guide rails, but it is presumed that the drawer slides along the fixed guide rails or rolls along the fixed guide rails on wheels. However, Tadaharu does not disclose or remotely suggest any rolling member assembly with a cage for rolling members, either for rolling the dish rack along the fixed rack rails or for guiding the movement of one rail within another.

As a result, Tadaharu cannot be seen as disclosing or suggesting a rear cage portion of a cage for rolling members having or any fluid passage openings on at least one partial section of such a rear cage portion, as claimed by Applicant.

In the Office Action, the Examiner indicates that *"it would be obvious to modify any component of the rail/cage, etc., with holes, as taught by Tadaharu to effect cleaning by a rotary spray arm"* (Office Action, page 2), referring to the modification of the rail/cage of Wied with fluid passage openings of Tadaharu.

As discussed in connection with the requirements for an obviousness rejection in the Manual of Patent Examining Procedure:

*To reject a claim based on this rationale, Office personnel must resolve the Graham factual inquiries. Then, Office personnel must articulate the following:*

*(1) a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;*

*(2) a finding that there was reasonable expectation of success; and*

*(3) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.*

TMEP §2143.

A mere statement that a modification of the teachings of a prior art document would have been obvious is not sufficient to establish *prima facie* obviousness:

*A statement that modifications of the prior art to meet the claimed invention would have been “ ‘well within the ordinary skill of the art at the time the claimed invention was made’ ” because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references. Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). \*\* “ ‘>[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.’ ” KSR, 550 U.S. at \_\_\_, 82 USPQ2d at 1396 quoting In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).*

TMEP §2143.01. See also, Ex parte Clapp, 227 USPQ 972, 973.

Thus, even where the references in combination disclose all the claimed elements, specific reasoning as to the combination of the references is required. Here, neither reference discloses fluid passages or through-holes in any part of a cage for rolling members of a drawer guide. Thus, the Examiner's mere assertion that it would have been obvious to modify Wied with a feature that is not specifically disclosed in Tadaharu



surely requires more than the Examiner's conclusory statement that such a modification would have been obvious. Accordingly, the Examiner has failed to establish *prima facie* obviousness.

There is simply no teaching, suggestion, or motivation, in Wied or in Tadaharu, or in the knowledge that was generally available to one of ordinary skill in the art at the time of the invention, to modify Wied as suggested by the Examiner. Applicant respectfully submit that it would not have been obvious to one skilled in the art to use a drawer guide of the type disclosed in Wied in a device having a chamber through which fluid or gas flows at an elevated pressure, such as a dishwasher or washing machine. Further, Tadaharu can be seen as teaching away from using a conventional telescopic drawer guide having a plurality of guide rails displaceable on other guide rails, as Tadaharu discloses using a very simple arrangement comprising a drawer which slides or rolls on stationary guide rails, rather than a telescopic drawer guide. A person of ordinary skill in the art would have learned from Tadaharu that the goal of displaceably guiding a drawer in a dishwasher can be achieved in a simple manner by means of a pair of stationary guide rails. There is no suggestion in either Wied or Tadaharu that would have lead a person of ordinary skill in the art to replace the simple guide rail arrangement of Tadaharu with the more complicated arrangement of Wied, and to subsequently modify the complicated arrangement of Wied with features not present in Tadaharu.

Applicant respectfully submits that if one of ordinary skill in the art were somehow motivated to use the drawer guide of Wied in a dishwasher or similar device, one of ordinary skill in the art would have attempted to prevent contamination of the rolling members by completely encasing them against penetration from the dirt and debris present in such devices, as discussed in the background section of Applicant's specification.

Even assuming *arguendo* that a person of ordinary skill in the art would have considered modifying the telescoping guide rails of Wied for use in a dishwasher by providing fluid passage openings in the guide rails as taught by Tadaharu, one skilled in the art would not have arrived at Applicant's claimed invention, since there is no teaching or motivation to be found in either reference that would have lead one of ordinary skill in

the art to provide a partial section of a rear cage portion of a cage for the rolling members of a rolling member assembly with fluid passage openings. Tadaharu teaches to provide fluid passage openings in the bottom of the horizontal guide rails 15 and 16 (i.e., the running tracks along which the drawer rolls or slides) so that water flowing from the top of the chamber can pass through the fluid passages to the bottom of the chamber, flushing residue left on the rails 15 and 16 off of these rails. Thus, Tadaharu teaches providing fluid passage openings in a vertical direction of travel of the fluid (i.e., from the top of the chamber to the bottom of the chamber). Accordingly, if one of ordinary skill in the art was somehow motivated to modify Wied with fluid passage openings as shown in Tadaharu, one skilled in the art would have modified Wied to include fluid passage openings in the horizontal section of the telescoping guide rails (i.e., the running track portion of the guide rails along which the rolling members roll). However, such a modification of Wied would not have resulted in the provision of fluid passages in the cage for the rolling members.

Further, as discussed in the background section of Applicant's specification, one of ordinary skill in the art having common sense at the time of the present invention would not have reasonably considered modifying the drawer guide of Wied for use in a dishwasher by providing fluid passage holes in the cage for the rolling members, as common sense would dictate that such a design would lead to contamination of the cage with dirt and debris, which would eventually hinder the smooth operation of the rolling members. See, Ex Parte Green, Appeal 20071271 (decided June 12, 2007); and Ex Parte Rinkevich et al, Appeal 2007-1317 (decided May 29, 2007).

In addition, even assuming *arguendo* that a person of ordinary skill in the art would have considered modifying the cage for rolling members of Wied with fluid passage openings as provided in the guide rails of Tadaharu, one skilled in the art would not have arrived at Applicant's claimed invention. As discussed above, Tadaharu teaches to provide fluid passage openings extending through the horizontal guide rails 15 and 16 in a vertical direction. Thus, Tadaharu teaches providing fluid passage openings extending in a vertical direction of travel of the fluid. Wied teaches a vertically extending rear cage portion. If one skilled in the art would have considered modifying the cage for

the rolling members of Wied with fluid passage openings as taught by Tadaharu, one skilled in the art would have provided such fluid passage openings in the top and bottom portions of the cage, and not in a vertically extending rear cage portion (i.e., a side of the cage), as such fluid passage openings in the vertically extending rear cage portion would be transverse to the vertical direction of fluid travel. Thus, the modification of Wied with fluid passage openings as disclosed in Tadaharu would not have lead one of ordinary skill in the art to Applicant's claimed invention.

In addition, "*the prior art can be modified or combined to reject claims as prima facie obvious as long as there is a reasonable expectation of success*" MPEP § 2143.02. The Examiner has failed to establish *prima facie* obviousness as the Examiner has not provided any evidence that one of ordinary skill in the art would have had success in modifying Wied for use in a chamber having a flow of fluid or gas under pressure, as indicated in the Office Action. It is respectfully submitted that one of ordinary skill in the art would not have had a reasonable expectation of success when modifying Wied to include fluid passage openings in the cage for the rolling members, since one of ordinary skill in the art would have concluded that such a modification would result in dirt and debris entering the cage and becoming trapped therein, rendering the drawer guide unusable.

Accordingly, the combination of Wied and Tadaharu does not disclose or remotely suggest providing a rolling member assembly with rolling members for guiding one of the guide rails in a displaceable manner on another guide rail, and providing a rear cage portion on a cage for the rolling members, where the rear cage portion includes at least one partial section that is provided with fluid passage openings in such a manner that said liquid or gas is adapted to flow through the cage when the chamber is in use, as claimed by Applicant.

Applicant respectfully submits that the present invention would not have been obvious to one skilled in the art in view of Wied, in combination with Tadaharu or any of the prior art of record.

Only with hindsight impermissibly gained from Applicant's disclosure could one of ordinary skill in the art have arrived at the conclusions reached by the Examiner.

Further remarks regarding the asserted relationship between Applicant's claim 41 and the prior art are not deemed necessary, in view of the foregoing discussion. Applicant's silence as to any of the Examiner's comments is not indicative of an acquiescence to the grounds of rejection.

Withdrawal of the rejections under 35 U.S.C. § 103(a) is therefore respectfully requested.

**(7)(1.3) Discussion of Final Office Action and Rejection of Dependent Claims 42-58**

Dependent claims 42-58 are also rejected under 35 U.S.C. §103(a) as being unpatentable over Wied in view of Tadaharu. Accordingly, the arguments set forth above with respect to independent claim 41 apply equally to Applicant's dependent claims 42-58, each of which ultimately depends from claim 41.

**(7)(1.3.1) Discussion of Rejection of Claims 42 and 43**

Claim 42 specifies that a ratio of a surface area of the fluid passage openings in the cage to a total surface area of the rear cage portion in the partial section amounts to at least approximately 20%. Claim 43 specifies that a ratio of a surface area of the fluid passage openings in the cage to a total surface area of the rear cage portion in the partial section amounts to at most approximately 90%.

The Examiner rejects claims 42 and 43 by merely indicating that such limitations regarding the fluid passage openings are determined by "rudimentary experiments" and that a "change in cause effective variables is not patentable" (final Office Action, page 5).

As discussed in Applicant's specification, in order to provide adequate flushing of dirt particles out of the cage, the ratio of the surface area of the fluid passage openings in the cage to a total surface area of the rear cage portion in the partial section should amount to at least approximately 20% (See, e.g., Applicant's specification, page 5, first and second full paras.). In addition, to retain mechanical stability of the cage, a ratio of the surface area of the fluid passage openings in the cage to a total surface area of the rear cage portion in the partial section should amount to at most approximately 90% (See, e.g., Applicant's specification, page 6, last full para. and para. bridging pages 6 and 7).

It is respectfully submitted that the minimum surface area of the fluid passage openings required for adequate flushing performance, and the maximum surface area of the fluid passage openings permissible while maintaining mechanical stability of the cage, are not limitations that can be determined by "rudimentary experimentation" as apparently assumed by the Examiner in view of the combination of Wied and Tadaharu. This is especially the case where, as discussed above, Tadaharu discloses only fluid passage openings in a horizontal section of a guide rail and neither reference discloses fluid passage openings in a rear cage portion of a cage for rolling members.

In addition, the Examiner has not provided any support for his assertion that the subject matter of either claim 42 or 43 would have been discoverable by rudimentary experiments.

Further remarks regarding the asserted relationship between Applicant's dependent claims 42 and 43 and the prior art are not deemed necessary, in view of the arguments presented above and the arguments presented in connection with claim 41. Applicant's silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection. Applicant reserves the right to argue the pending dependent claims in more detail in Reply to the Examiner's Answer to this Appeal Brief.

Withdrawal of the rejections to dependent claims 42 and 43 under 35 U.S.C. § 103(a) is therefore respectfully requested.

**(7)(1.3.2) Discussion of Rejection of Claims 44 and 45**

Claim 44 specifies that at least one of the partial sections that is provided with fluid passage openings extends over at least one third of a length of the rear cage portion. Claim 45 specifies that a sum of lengths of the partial sections that are provided with fluid passage openings is greater than approximately two thirds of a total length of the rear cage portion.

The Examiner has not specifically addressed the subject matter of claim 44 or claim 45 in the final Office Action. The Examiner instead broadly indicates that "*it would have been obvious to one of ordinary skill in the art at the time of the invention to modify*

*Tadaharu with Wied to create a smoothly operating rail/cage (having holes in the entire length of drawer guide) having self-cleaning capability to achieve the expected result"* (final Office Action, page 5). It is noted that the section 103(a) rejection is based on Wied modified by Tadaharu, and not based on the modification of Tadaharu with Wied as indicated by the Examiner in the foregoing passage.

As discussed above in connection with claim 41, a mere statement that a modification of the teachings of a prior art document would have been obvious is not sufficient to establish *prima facie* obviousness (TMEP §2143.01).

In addition, it is respectfully submitted that the fact that Tadaharu discloses fluid passage openings in a horizontal, stationary guide rail would not have rendered it obvious to provide fluid passage openings in any particular amount, length or section of the vertically extending rear cage portion of Wied.

Further remarks regarding the asserted relationship between Applicant's dependent claims 44 and 45 and the prior art are not deemed necessary, in view of the arguments presented above and the arguments presented in connection with claim 41. Applicant's silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection. Applicant reserves the right to argue the pending dependent claims in more detail in Reply to the Examiner's Answer to this Appeal Brief.

Withdrawal of the rejections to dependent claims 44 and 45 under 35 U.S.C. § 103(a) is therefore respectfully requested.

**(7)(1.3.3) Discussion of Rejection of Claim 46**

Claim 46 specifies that at least one partial section of one of the guide rails comprises fluid passage openings whose lateral distance from at least one lateral edge of an associated rear rail portion is less than approximately a quarter of a width of the rear rail portion.

The Examiner rejects claim 46 by merely indicating that such limitations regarding the fluid passage openings are determined by "rudimentary experiments" and that a "change in cause effective variables is not patentable" (final Office Action, page 5).

Tadaharu discloses fluid passage openings in the horizontal section of a stationary guide rail. In contrast, Applicant's claimed rear rail portion is a vertically extending portion of the guide rail (see, e.g., rear rail portion 144a of Figure 7).

Further, Tadaharu does not specify any particular lateral distance of the openings from any lateral edge. Rather, Tadaharu indicates that the rails 15 and 16 may have many through-holes "*in the approximately center*" of the rails (Tadaharu, para. 0015 of the English language translation).

In addition, the Examiner has not provided any support for his assertion that the subject matter of claim 46 would have been discoverable by rudimentary experiments.

Further remarks regarding the asserted relationship between Applicant's dependent claim 46 and the prior art are not deemed necessary, in view of the arguments presented above and the arguments presented in connection with claim 41. Applicant's silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection. Applicant reserves the right to argue the pending dependent claims in more detail in Reply to the Examiner's Answer to this Appeal Brief.

Withdrawal of the rejections to dependent claim 46 under 35 U.S.C. § 103(a) is therefore respectfully requested.

#### **(7)(1.3.4) Discussion of Rejection of Claim 47**

Claim 47 specifies that a pertinent partial section of the rear cage portion comprises at least three substantially congruent fluid passage openings.

The Examiner acknowledges that the prior art does not teach congruent fluid passage openings, but indicates that the subject matter of claim 47 is an obvious design choice (final Office Action, page 5).

Applicant respectfully submits that, while it may be an obvious design choice to provide adjacently arranged and equally spaced fluid passage openings in the fixed guide rail of Tadaharu, the provision of at least three congruent fluid passage openings in a rear cage portion of a cage for rolling members cannot be considered an obvious design choice in view of the disclosures of Wied and Tadaharu.

In addition, the Examiner has not provided any support for his assertion that the

subject matter of claim 47 would have been an obvious design choice.

Further remarks regarding the asserted relationship between Applicant's dependent claim 47 and the prior art are not deemed necessary, in view of the arguments presented above and the arguments presented in connection with claim 41. Applicant's silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection. Applicant reserves the right to argue the pending dependent claims in more detail in Reply to the Examiner's Answer to this Appeal Brief.

Withdrawal of the rejections to dependent claim 47 under 35 U.S.C. § 103(a) is therefore respectfully requested.

**(7)(1.3.5) Discussion of Rejection of Claims 48 and 49**

Claim 48 specifies that an extent of each of the fluid passage openings in the rear cage portion is at most approximately 5 mm in at least one direction in which it extends. Claim 49 specifies that an extent of each of the fluid passage openings in the rear cage portion is at most approximately 5 mm in the direction of movement of the drawer.

The Examiner rejects claims 48 and 49 by merely indicating that such limitations regarding the fluid passage openings are determined by "rudimentary experiments" and that a "change in cause effective variables is not patentable" (final Office Action, page 5).

Tadaharu does not disclose any specific size of the fluid passage openings provided in the stationary guide rails. Further, claims 48 and 49 do not merely specify a size of the fluid passage openings, but rather a dimension of the openings in a particular direction (in the direction in which the passage extends according to claim 48 and in a direction of movement of the drawer in claim 49). There is no disclosure or remote suggestion of this subject matter in the combined teachings of Wied and Tadaharu.

In addition, the Examiner has not provided any support for his assertion that the subject matter of claim 48 or 49 would have been discoverable by rudimentary experiments.

Further remarks regarding the asserted relationship between Applicant's dependent claims 48 and 49 and the prior art are not deemed necessary, in view of the arguments presented above and the arguments presented in connection with claim 41.



Applicant's silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection. Applicant reserves the right to argue the pending dependent claims in more detail in Reply to the Examiner's Answer to this Appeal Brief.

Withdrawal of the rejections to dependent claims 48 and 49 under 35 U.S.C. § 103(a) is therefore respectfully requested.

**(7)(1.3.6) Discussion of Rejection of Claim 50**

Claim 50 specifies that at least one of the guide rails of the drawer guide and at least one cage for the rolling members of the same drawer guide are provided with fluid passage openings.

The Examiner has not specifically addressed the subject matter of claim 50 in the final Office Action. The Examiner instead broadly indicates that "*it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Tadaharu with Wied to create a smoothly operating rail/cage (having holes in the entire length of drawer guide) having self-cleaning capability to achieve the expected result*" (final Office Action, page 5). It is noted that the section 103(a) rejection is based on Wied modified by Tadaharu, and not based on the modification of Tadaharu with Wied as indicated by the Examiner in the foregoing passage.

Tadaharu does disclose a stationary guide rail having fluid passage openings. However, as discussed in detail above in connection with claim 41, there is no disclosure or suggestion in Wied or Tadaharu of fluid passage openings in a cage for rolling members. Also, as discussed above in connection with claim 41, one skilled in the art would not have looked to modify Wied with the fluid passage openings of Tadaharu, and even if someone skilled in the art were so motivated, they would not have arrived at Applicant's claimed invention. In particular, if one of ordinary skill in the art at the time of the present invention, having common sense, would have modified Wied with fluid passage openings, the fluid passage openings would, at best, have been provided in the horizontal portion of the guide rails, as disclosed by Tadaharu.

There is simply no disclosure or suggestion in either reference to provide fluid

passage openings in both the guide rails and a rear cage portion of a cage for rolling members, as claimed by Applicant in claim 50.

Further remarks regarding the asserted relationship between Applicant's dependent claim 50 and the prior art are not deemed necessary, in view of the arguments presented above and the arguments presented in connection with claim 41. Applicant's silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection. Applicant reserves the right to argue the pending dependent claims in more detail in Reply to the Examiner's Answer to this Appeal Brief.

Withdrawal of the rejections to dependent claim 50 under 35 U.S.C. § 103(a) is therefore respectfully requested.

**(7)(1.3.7) Discussion of Rejection of Claim 51**

Claim 51 depends on claim 50 and specifies that when the drawer guide is pushed completely into an interior of the chamber, at least one fluid passage opening in the guide rail and at least one fluid passage opening in the cage for the rolling members are aligned with one another.

The Examiner acknowledges that the prior art does not teach fluid passage openings which are aligned when the drawer guide is pushed completely into the chamber, but indicates that the subject matter of claim 51 is an obvious design choice (final Office Action, page 5).

It is respectfully submitted that even if one skilled in the art were somehow motivated to modify Wied with the teachings of Tadaharu with regard to fluid passage openings, one of ordinary skill in the art at the time of the invention would not have arrived at Applicant's claimed invention. In Wied, the rear cage portion is a vertically extending rear cage portion. Tadaharu teaches fluid passage openings in the horizontal section of the guide rails 15 and 16, which allow water to pass through in the vertical direction of travel (i.e., from top to bottom of the chamber of Tadaharu). Thus, if one skilled in the art were somehow motivated to provide fluid passage openings in the vertically extending rear cage portion of Wied and in the horizontal section of the telescoping guide rails of Wied, such fluid passage openings could not be aligned as they

would be in different planes.

There is simply no disclosure or suggestion in either reference to provide fluid passage openings in both the guide rails and a rear cage portion of a cage for rolling members, and then to align these openings when the drawer is in a closed position, as claimed by Applicant in claim 51.

Further remarks regarding the asserted relationship between Applicant's dependent claim 51 and the prior art are not deemed necessary, in view of the arguments presented above and the arguments presented in connection with claims 41 and 50. Applicant's silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection. Applicant reserves the right to argue the pending dependent claims in more detail in Reply to the Examiner's Answer to this Appeal Brief.

Withdrawal of the rejections to dependent claim 51 under 35 U.S.C. § 103(a) is therefore respectfully requested.

**(7)(1.3.8) Discussion of Rejection of Claim 52**

Claim 52 specifies that at least one of the guide rails of the drawer guide comprises a rolling member running track which is provided with at least one fluid passage opening.

Tadaharu discloses fluid passage openings on the horizontal section of the guide rails 15 and 16 along which the drawer rolls or slides. Although this section of guide rail is equivalent to the running track claimed by Applicants, as discussed above, the provision of openings in running tracks would hinder the movement of a rolling member assembly of the type used in Wied. This problem is acknowledged by Applicant's specification, and accordingly the present invention contemplates only holes in one end region of the running tracks (see, e.g., Applicant's specification, page 12, second full paragraph).

Further, the problem of openings in the running track hindering movement of rolling members is presumably not present in Tadaharu, as the drawer of Tadaharu is slid along the track or rolls along the track on conventional wheels, which in such prior art

devices would be larger than such fluid passage openings and which would be in line contact with the track and not just in single-point contact with the track.

Also, as discussed above in connection with claims 50 and 51, it would not have been obvious from the combination of Wied and Tadaharu to provide fluid passage openings in both the guide rail running tracks and the rear cage portion of the cage for the rolling members.

Further remarks regarding the asserted relationship between Applicant's dependent claim 52 and the prior art are not deemed necessary, in view of the arguments presented above and the arguments presented in connection with claim 41. Applicant's silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection. Applicant reserves the right to argue the pending dependent claims in more detail in Reply to the Examiner's Answer to this Appeal Brief.

Withdrawal of the rejections to dependent claim 52 under 35 U.S.C. § 103(a) is therefore respectfully requested.

**(7)(1.3.9) Discussion of Rejection of Claim 53-56**

Further remarks regarding the asserted relationship between Applicant's dependent claims 53-56 and the prior art are not deemed necessary, in view of the arguments presented above in connection with claim 41. Applicant's silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection. Applicant reserves the right to argue the pending dependent claims in more detail in Reply to the Examiner's Answer to this Appeal Brief.

Withdrawal of the rejections to dependent claims 53-56 under 35 U.S.C. § 103(a) is therefore respectfully requested.

**(7)(1.3.10) Discussion of Rejection of Claims 57 and 58**

Claim 57 specifies that the chamber comprises a washing machine chamber. Claim 58 specifies that the chamber comprises a dishwasher chamber.

Tadaharu teaches use of a fixed guide rail with fluid passage openings in a dishwasher. The drawer guide of Wied is not designed for use in any type of chamber

having a flow of fluid or gas.

As discussed above in connection with claim 41, there is no suggestion or motivation in either reference to use the drawer guide of Wied in a washing machine or dishwasher chamber. Also as discussed above in connection with claim 41, at the time of Applicant's invention, telescoping drawer guides of the type disclosed in Wied were not used in dishwashers or washing machines, and one of ordinary skill in the art would have been taught away from using such a drawer guide in a dishwasher or washing machine. Thus, the combination of Wied and Tadaharu would not have lead one of ordinary skill in the art to Applicant's claimed invention as set forth in claims 57 and 58.

Further remarks regarding the asserted relationship between Applicant's dependent claims 57 and 58 and the prior art are not deemed necessary, in view of the arguments presented above and the arguments presented in connection with claim 41. Applicant's silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection. Applicant reserves the right to argue the pending dependent claims in more detail in Reply to the Examiner's Answer to this Appeal Brief.

Withdrawal of the rejections to dependent claims 57 and 58 under 35 U.S.C. § 103(a) is therefore respectfully requested.

#### **(8) CONCLUSION**

Applicant respectfully submits that the present invention set forth in claims 41-58 is not anticipated by and would not have been obvious to one skilled in the art in view of Wied taken in combination with Tadaharu or any of the other prior art of record.

The combination of Wied and Tadaharu does not disclose or remotely suggest a cage for rolling members of a drawer guide for use in a chamber through which there is a flow of liquid or gas at an elevated pressure, where the cage has a rear cage portion with at least one partial section that extends in the direction of movement of the drawer and is provided with fluid passage openings in such a manner that said liquid or gas is adapted to flow through the cage when the chamber is in use, as claimed by Applicant.

Neither Wied nor Tadaharu discloses fluid passage openings in a rear cage portion of a cage for rolling members. Tadaharu discloses fluid passage openings in the horizontal section of the guide rails 15 and 16 which allow liquid to flow through the openings in a direction of travel of fluid in the chamber.

As discussed in detail above, there is no motivation or suggestion to use the drawer guide of Wied in a chamber through which fluid or gas is adapted to flow, or to modify Wied to provide fluid passage openings in the vertically extending rear cage portion of Wied.

In view of the above, reversal of the rejections set forth in the Final Office Action is respectfully requested.

Respectfully submitted,



Douglas M. McAllister  
Attorney for Applicant(s)  
Registration No.: 37,886  
Lipsitz & McAllister, LLC  
755 Main Street  
Monroe, CT 06468  
(203) 459-0200

ATTORNEY DOCKET NO.: HOE-793  
Date: June 2, 2009

**(9) CLAIMS APPENDIX**

1-40. (Cancelled).

41. A method for providing a drawer guide for a drawer in a chamber through which there is a flow of liquid or gas at an elevated pressure, comprising the steps of:

providing a plurality of guide rails for said drawer guide, wherein one guide rail is associated with said drawer and another guide rail is associated with said chamber;

providing a rolling member assembly with rolling members for guiding one of the guide rails in a displaceable manner on another guide rail in a direction of movement of the drawer;

providing a cage for the rolling members;

providing a rear cage portion on said cage, said rear cage portion including at least one partial section that extends in the direction of movement of the drawer and is provided with fluid passage openings in such a manner that said liquid or gas is adapted to flow through the cage when the chamber is in use.

42. A method in accordance with claim 41, wherein:

a ratio of a surface area of the fluid passage openings in the cage to a total surface area of the rear cage portion in the partial section amounts to at least approximately 20%.

43. A method in accordance with claim 41, wherein:

a ratio of a surface area of the fluid passage openings in the cage to a total surface area of the rear cage portion in the partial section amounts to at most approximately 90%.

44. A method in accordance with claim 41, wherein at least one of the partial sections that is provided with fluid passage openings extends over at least one third of a length of the rear cage portion.

45. A method in accordance with claim 41, wherein a sum of lengths of the partial sections that are provided with fluid passage openings is greater than approximately two thirds of a total length of the rear cage portion.

46. A method in accordance with claim 41, wherein at least one partial section of one of the guide rails comprises fluid passage openings whose lateral distance from at least one lateral edge of an associated rear rail portion is less than approximately a quarter of a width of the rear rail portion.

47. A method in accordance with claim 41, wherein a pertinent partial section of the rear cage portion comprises at least three substantially congruent fluid passage openings.

48. A method in accordance with claim 41, wherein an extent of each of the fluid passage openings in the rear cage portion is at most approximately 5 mm in at least one direction in which it extends.

49. A method in accordance with claim 41, wherein an extent of each of the fluid passage openings in the rear cage portion is at most approximately 5 mm in the direction of movement of the drawer.

50. A method in accordance with claim 41, wherein at least one of the guide rails of the drawer guide and at least one cage for the rolling members of the same drawer guide are provided with fluid passage openings.

51. A method in accordance with claim 50, wherein when the drawer guide is pushed completely into an interior of said chamber, at least one fluid passage opening in the guide rail and at least one fluid passage opening in the cage for the rolling members are aligned with one another.



52. A method in accordance with claim 41, wherein at least one of the guide rails of the drawer guide comprises a rolling member running track which is provided with at least one fluid passage opening.

53. A method in accordance with claim 41, wherein at least one rolling member assembly of the drawer guide comprises rolling members in the form of balls.

54. A method in accordance with claim 41, wherein at least one rolling member assembly of the drawer guide comprises rolling members which are each in single-point contact with a rolling member running track of a guide rail of the drawer guide that is associated with the rolling members.

55. A method in accordance with claim 41, wherein the drawer guide comprises at least one further guide rail arranged between the guide rail associated with the drawer and the guide rail associated with the chamber.

56. A method in accordance with claim 41, wherein the drawer guide allows the drawer to be withdrawn substantially completely from an interior of the chamber.

57. A method in accordance with claim 41, wherein the chamber comprises a washing machine chamber.

58. A method in accordance with claim 41, wherein the chamber comprises a dishwasher chamber.

(10) EVIDENCE APPENDIX

[NONE]

(11) RELATED PROCEEDINGS APPENDIX

[NONE]